

Remarks:

In response to the Official Action mailed December 18, 2006 and made final, Applicant respectfully requests reconsideration, reexamination and allowance of claims 1, 4, 6-7, and 9 in view of the above amendments and the following remarks.

The Examiner has first objected to the amendment filed October 11, 2006 and the specification (as amended) and has rejected claims 1, 4, 6-7, and 9 under 35 U.S.C. §112, second paragraph, as reciting: (1) the sealant material is non-expanding; and (2) the concentrations are in weight percentages. The Examiner has also stated, without an outright rejection or objection, that concentration as claimed, in percent of the “sealant material” should in fact be as a percent of the “sealant”, essentially objecting to the word “material” included in the claims.

Accordingly, Applicant has amended the specification and the claims to delete the phrases, terms and words that the Examiner has objected to. While Applicant believes that bases exist for many of the previous (now deleted) amendments, Applicant has nevertheless made these amendments in a good faith effort to move prosecution of the present application on to allowance. Accordingly, Applicant submits that the specification objections and the claim rejections under 35 U.S.C. Section 112 have been addressed by the above-noted amendments.

That being said, the only remaining issue is the rejection of claims 1, 4, 6 and 7 under 35 U.S.C. 103(a) as being unpatentable over Knight et al., previously discussed. The Examiner has taken the position that Knight et al. teach the claimed composition except for specifically reciting calcium carbonate as the 0-10 weight percent inorganic filler/pigment and 2-20 weight percent slip agent, both of which, in the Examiner’s view, “read upon the instantly claimed ‘inert filler material’”. The Examiner has maintained the position that calcium carbonate is an obvious species of inorganic filler material, inorganic pigment and inorganic slip agent utilized in the sealant art as evidenced by Blank et al. or Douglas or Bryant et al. or Samuel et al., or Takago et al., and further evidenced by Ullmann’s and Kirk-Othmer. Using this, the Examiner has concluded that one skilled in the art it would have been motivated to use calcium carbonate, an obvious, naturally occurring and abundant, commonly used filler material in the art as the inert mineral filler material in the invention taught by Knight et al.

There is, however, one element that the Examiner has failed to show is present in the Knight reference, that the Examiner alludes to in the Action. That is, claim 1 (as amended) specifically recites a calcium carbonate inert mineral filler material in a concentration of about 20 percent to about 45 percent of the sealant. The calcium carbonate is called out as a filler material.

In using the Knight reference, the Examiner has aggregated the “non-fusible materials”, which are described as materials, such as titanium dioxide, china clay or other inorganic pigments or fillers and the slip aid that may be included in the composition (such as conventional silicone slip aid, a hydrogenated castor oil wax or a fatty amide . . .), in order to approach the claimed inert filler concentration.

In the Knight reference, the non-fusible materials are noted as being present in a concentration of “normally below 10% and most usually below 5%, based on the weight of organic components, for instance 0.5 to 3% by weight”, and the slip aid is noted as being present “generally in an amount of [sic] below 20% and preferably below 10%. Best results are generally obtained with from 0.2 to 5%, most preferably 1 to 3% . . .”.

As such, it is only with the aggregation of the slip aid (let’s say for the sake of argument 20%) and the non-fusible material (again, for the sake of argument, 10%), that the claimed range of 20 to 45 percent of an inert filler material is achieved. This, however, assumes that the slip aid is considered an inert filler material, which, Applicant submits it is not.

A filler material is exactly that, . . . a filler. It adds bulk and volume. Sometimes, a filler is used to enhance the physical, mechanical, and thermal properties of polymers. However, it does not impart a characteristic, only, perhaps, enhance one.

The slip aid is not a filler. Slip aids, slip agents or slip additives are used to modify the friction properties of other materials (such as polymers). They tend to overcome a material’s (polymer’s) natural tackiness to permit the material to more easily slide or move through equipment, such as molding equipment and the like. These additives are not used to bulk-up a material (e.g., to add weight or volume), but instead are intended to provide a measure of slip beyond the material’s natural characteristics and abilities.


The non-fusible material, which Applicant submits is the only constituent that could be likened to the filler material is present in a concentration of only, at most, 10%. Even at that, the specification really teaches that a lesser amount (most usually below 5%), is more in line with what is intended by that disclosure. Accordingly, the presently claimed range of about 20% to 45% is far and away outside of the range contemplated by Knight et al. As to the slip aid, it is Applicant's position that to consider the slip aid as part of the claimed filler material is simply overstating what one skilled in the art would glean from Knight et al.

Accordingly, it is Applicant's position that the Examiner's characterization of the slip agent of Knight as part of the claimed calcium carbonate inert mineral filler material in a concentration of about 20 percent to about 45 percent of the sealant, and that the rejection of claims 1, 4, 6 and 7 under 35 U.S.C. 103(a) as unpatentable over Knight et al. should be withdrawn.

Accordingly, Applicant respectfully requests reconsideration, reexamination and allowance of claims 1, 4, 6-7, and 9 in view of the above amendments and remarks. Should the Examiner believe that a telephone interview would expedite prosecution and allowance of the present application, or address any outstanding formal issues, she is respectfully requested to contact the undersigned.

Applicant believes that no extension of time is necessary in connection with the present AMENDMENT D AFTER FINAL. If, however, an extension of time is required, please consider this a petition therefore and if any fees are due, please debit any deficiency to Deposit Account No. 50-2035 as may be required in connection with the submission of this Amendment. IN NO EVENT CAN THE ISSUE FEE BE CHARGED TO THE DEPOSIT ACCOUNT.

Respectfully submitted,

By 
Mitchell J. Weinstein
Reg. No. 37,963

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LEVENFELD PEARLSTEIN, LLC
2 N. LaSalle Street
Suite 1300
Chicago, Illinois 60602
(312) 476-7593 Telephone
(312) 346-8434 Facsimile
mweinstein@lplegal.com